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December 2, 1997

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket No. 96-262

Dear Ms. Salas:

On Monday, December 1, 1997, Ms. Genevieve Morelli, Mr. Joseph Gillan and I, on behalf of the Competitive Telecommunications Association ("CompTel"), met with Mr. Kyle Dixon in Commissioner Powell's office, Mr. Paul Gallant in Commissioner Tristani's office, and Mr. Richard Metzger and Ms. Jane Jackson of the Common Carrier Bureau regarding the above-referenced proceeding. In that meeting, we discussed CompTel's pending petition for expedited reconsideration in CC Docket No. 96-262, focusing upon CompTel's request that the FCC eliminate the presubscribed interexchange carrier charge ("PICC") for multiline business customers and modify its new rules governing the tandem switching rate. In addition, we raised potential implementation problems with the new access rules and policies that take effect on January 1, 1998. CompTel strongly opposes the back-billing of multi-line business PICCs by incumbent local exchange carriers because it would be difficult if not impossible for long distance carriers to recover such costs from their subscribers. We distributed the attached materials at these meetings.

Respectfully submitted,

Robert J. Aamoth

cc: Mr. Kyle Dixon
Mr. Paul Gallant
Mr. Richard Metzger
Ms. Jane Jackson

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COMPTEL COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Carol Ann Bischoff
Vice President, Legislative &
Regulatory Affairs
cbischoff@comptel.org

December 1, 1997

Mr. Kalpak Gude
Counsel
Communications Subcommittee of
the Senate Committee on Commerce
227 Hart Senate Office Building
Washington, DC 20510

Dear Kalpak:

Thank you for meeting with CompTel recently to discuss several issues of mutual concern, including the FCC's *Access Charge Reform Order*. As you are aware, a major component of this decision was to shift a portion of the subsidy currently collected from interexchange access usage to business customers based on the number of local (and thus access) lines that they use. This new subsidy is collected by a $2.75 per line charge that will be assessed on the business customer's presubscribed interexchange carriers (i.e., the multi-line business PICC) effective on January 1, 1998.

CompTel opposes this arbitrary reassignment of subsidy from usage to business customers because it simply introduces a new form of implicit subsidy -- in clear conflict with the underlying goals of the Telecommunications Act. One of the principal dangers of implicit subsidies is that they are arbitrary, discriminatory and frequently lead to greater problems than they solve.

CompTel has been particularly concerned with the multi-line business PICC because its members disproportionally serve business customers that rely on a large number of local lines in their businesses. As such, the Commission's *Access Charge Reform Order* unjustly shifts a large portion of this implicit subsidy on CompTel's members and its customers.

Just as the multi-line business PICC inequitably affects customers and interexchange competition, however, recent information suggests that it inequitably affects certain states as well. As part of its implementation procedures, U S West has provided carriers with estimated impact statements that summarize their change in access costs caused by the *Access Charge Reform Order*. The statement provided one of our members in Arizona appears to also provide a summation of the impact on all carriers providing interstate services in that State. This impact statement shows that the effect on Arizona consumers collectively is as follows:

Current Interstate Access Revenues In Arizona	$ 124,886,619
Proposed Interstate Access Revenues In Arizona	$199,775,865
Increase	$74,889,246
Percentage Increase	+60%

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In other words, effective January 1, 1998, Arizona consumers will experience an ***increase*** in the cost of interstate long distance services of nearly ***$ 75 million***, simply because the FCC's *Access Charge Reform* policy rearranges the implicit subsidy in access service by imposing more of the subsidy on multi-line business customers.

On July 11, 1997, CompTel filed *a Petition for Expedited Reconsideration* of the *Access Charge Reform* proceeding that currently is pending before the FCC. CompTel believes that the Commission's decision to arbitrarily increase the implicit subsidy on multi-line business customers is fundamentally inequitable to these customers and the carriers that serve them. The U S West analysis -- which was not available to the FCC when it adopted its decision -- appears to indicate that it is inequitable to entire states as well.

Although CompTel's member company confirmed with U S West that its impact statement does disclose an expected statewide impact, CompTel does not have access to the data necessary to independently confirm this conclusion or validate U S West's analysis. Therefore, CompTel respectfully encourages Chairman McCain to request such information from the FCC so that the potential effects of this decision can be fully understood and CompTel's *Reconsideration Petition* promptly addressed.

Sincerely,

Carol Ann Bischoff

Carol Ann Bischoff
Vice President
Legislative and Regulatory Affairs

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

Petition of New York Telephone Company for	)	
Approval of the Statement of Generally Available	)	
Terms and Conditions Pursuant to Section 252 of	)	Case 97-C-0271
the Telecommunications Act of 1996 and Draft	)	
Filing of Petition for InterLATA Entry Pursuant	)	
to Section 271 of the Telecommunications Act of	)	
1996 to Provide In-Region, InterLATA Services	)	
in the State of New York	)	

AFFIDAVIT OF JOSEPH GILLAN
ON BEHALF OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (COMPTEL)

STATE of Florida)
COUNTY of Volusia)

Joseph Gillan, being first duly sworn upon oath, do hereby depose and state as follows:

1. My name is Joseph Gillan. I am a consulting economist with a practice specializing in the telecommunications industry. My clients span a range of interests and have included state public utility commissions, consumer advocate organizations, local exchange carriers, competitive access providers and long distance companies.

2. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics. From 1980 to 1985, I served on the staff of the Illinois Commerce Commission where I had responsibility for policy analysis relating to the emergence of competition in regulated markets, in particular the telecommunications industry. While on the staff of the Commission, I served on the staff subcommittee for the NARUC Communications Committee and was appointed to the Research Advisory Council overseeing NARUC's research arm, the National Regulatory Research Institute.

3. In 1985 I left the Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. At the end of 1986, I resigned my position of Vice President-Marketing/Strategic Planning to begin a consulting practice. I have testified extensively before several dozen state

public utility commissions, four state legislatures, the Federal-State Joint Board on Separations Reform, and the Commerce Committee of the United States Senate. I currently serve on the Advisory Council to New Mexico State University's Center for Regulation.

4. The purpose of my affidavit is to address Bell Atlantic-New York's (BA-NY) claim that it has implemented the operational support systems to provision unbundled network elements (UNEs) at a level sufficient to meet projected demands.[1] As a threshold matter, BA-NY's claim is premised on a dramatically reduced projection -- a reduction of more than 67% -- of competitive activity for 1998.[2] Thus, BA-NY appears to have adopted the age-old solution to performance below expectation -- lower the expectation to fit the performance.

5. A closer examination of the documentation "supporting" BA-NY's claim that its OSS systems are capable of handling commercial UNE volumes reveals a starker truth -- BA-NY's claim is based almost entirely on the platform combination that it no longer will offer.[3] The evidence that BA-NY offers is an "end-to-end" analysis performed by Coopers and Lybrand.[4] Significantly, more than *98%* of the UNE orders tested by Coopers and Lybrand were *platform* orders -- even though BA-NY now refuses to offer this arrangement.[5]

6. Overall, BA-NY's affidavits demonstrate the inherent discrimination embedded in its decision to deny carriers access to network element combinations. These affidavits demonstrate that BA-NY's position (if allowed by the Commission) would introduce substantial delay in transferring customers to competitors, increase provisioning errors, dramatically reduce BA-NY's ability to support competition and unnecessarily increase its costs -- costs which it would undoubtedly attempt to impose on its competitors.

7. BA-NY's position that any platform order should be separated and provisioned as though it were a request for an unbundled loop is inherently discriminatory. Importantly, the Coopers and Lybrand analysis documents this discrimination by demonstrating that BA-NY is unable to provision and support unbundled loops in the same time frames, and at the same

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1 Affidavit of Gary Butler on behalf of Bell Atlantic - New York , page 4.

2 BA-NY's original projection for UNE-based competition contained in Jonathan Smith's Exhibit 1 indicated 135,884 links and 203,819 combinations for a total of 339,703 UNE-based arrangements. BA-NY's revised projection (Exhibit 2 to Smith's Affidavit), however, expects only 85,244 links and 24,205 ports by year-end 1998.

3 I would note that CompTel does not believe that BA-NY can withdraw its offer of platform combinations as presumed by its Affidavits.

4 The "end-to-end" testing methodology and results are presented in Affidavit of Gerard Mulcahy on behalf of Bell Atlantic (Mulcahy Affidavit).

5 For instance, of the 1,236 "peak day" orders tested by Coopers and Lybrand, 1,223 orders were platform orders. Only 13 orders were for unbundled loops obtained individually. Exhibit E-6 (page E-30), Attachment 1, Mulcahy Affidavit.

capacity levels, as platform orders. Exhibit 1 to this affidavit compares the service intervals and capacity levels for the UNE platform and individual orders documented by BA-NY's affidavits.

8. Although the Examiner's Ruling Concerning the Status of the Record did not specifically request comment on BA-NY's provisioning of network element combinations,[6] BA-NY's revised position raises new and important issues that must be addressed before BA-NY can be authorized to provide in-region interLATA services. Although the decision of the Eighth Circuit vacated the FCC's requirement that BA-NY *combine* the network elements themselves, this Commission has not excused BA-NY from a comparable obligation under state law, nor has BA-NY adequately explained how it intends to provide entrants non-discriminatory access to combine elements in the BA-NY network.[7]

9. BA-NY's policy to deny entrants access to network element combinations creates a number of significant barriers to competition. In practical terms, BA-NY's position is that if an entrant is requesting a loop and port, and the loop and port are already connected, BA-NY intends to first disconnect these facilities before providing them to the entrant. This physical disruption to network elements will have four principal effects:

* an additional delay transferring customers to new local providers (caused by the time that it takes to disconnect and reconnect network elements),
* an otherwise avoidable service outage when a customer changes local carriers,
* an increased probability of human error caused by the insertion of unnecessary manual activities (such as disconnecting and reconnecting network elements), and
* finally, the additional cost to separate network elements into individual components and then reconnect them.

10. Denying access to the platform combinations will have a serious impact on the development of local competition in New York. BA-NY's own projections *had been* that the platform would represent 60% of its network element competition by 2001.[8] Network element-based competition is crucial to local competition because it fosters price competition and brings

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6 Ruling Concerning the Status of the Record, Case 97-C-0271, issued July 8, 1997.

7 BA-NY's proposal to deliver network elements to an entrant's collocation cage *does not* provide non-discriminatory access to the BA-NY network as assumed by the Eighth Circuit.

8 BA-NY Exhibit Smith-1, attached to Affidavit of Jonathan B. Smith, page 1.

competitive activity to the switched access market.[9]

11. Residential (and small business) competition is particularly sensitive to achieving non-discriminatory access to platform combinations. To compete for smaller customers, entrants must be able to easily and routinely use network elements to offer services -- a task made far easier when network elements can be obtained in a platform configuration.[10] BA-NY's data shows that 90% of the platform orders to date are used to serve residential customers, while essentially all unbundled loop orders serve business customers.[11] Residential competition is dependent upon the continued availability of the platform.

12. In 1995, more than 42 million customers changed their long distance carrier, many within 24 hours of making the decision.[12] If most consumers prefer one stop shopping, then the level of competition for the compulsory service in the package -- local phone service -- will affect competition in all related markets. In this sense, local service competition will become the "pace car" for the competitive market of the future. Eliminate local competition for residential (and small business) consumers and BA-NY will enjoy a dramatic advantage among these customers for interLATA services as well.[13]

13. The gratuitous disruption of network elements not only precludes competition, it significantly impacts other important policies as well. Both the FCC's access reform and universal service decisions presume that network elements can be used by entrants to rapidly and broadly serve residents and small businesses. In its access reform decision, the FCC assumed that entrants would be able to use network elements to offer access services in competition with the incumbent and that, therefore, access prices need not be prescribed by the FCC. Similarly, the FCC's universal service system assumes that consumers will have a choice between an incumbent and competitor, with either qualifying for subsidy if the network cost in a particular area is unacceptably high. Both assumptions are nullified by any action which significantly

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9 Resale-based competition will not constrain BA-NY's retail prices because the reseller's costs rise in parallel with any retail price increase implemented by BA-NY. Furthermore, service-resale promotes BA-NY's access monopoly because BA-NY continues to provide access service to the service-resellers' customers.

10 BA-NY admits that its outside contractor was able to hire and train "in just a few weeks" a group of people to handle simple platform orders. Attachment 1 to Mulcahy Affidavit, page 5.

11 Attachment 1 to Mulcahy Affidavit, page 5.

12 Peter K. Pitsch, The Long Distance Market is Competitive, PITSCH COMMUNICATIONS, September 3, 1996, page 2.

13 Merrill Lynch as reported that residential and small/medium size business customers generate more than 70% of the interLATA long distance revenues. Merrill Lynch Telecom Services Bulletin, May 14, 1996, Appendix 2 (previously published on March 21, 1996). Consequently, if BA-NY succeeds in gaining an artificial advantage in this market segment, it would enjoy a substantial competitive advantage in the interLATA market overall.

limits the commercial usefulness of network elements.

14. It makes no sense to create an environment where each time a customer changes local telephone companies, a technician from the customers' *old* local telephone company begins disconnecting facilities to the customer's home or business -- followed on its heels by a technician from the customer's *new* local telephone company, reconnecting these same facilities to reestablish phone service. Yet, this is precisely the environment that BA-NY apparently demands. The inevitable result is discrimination and market domination -- outcomes which the New York Commission should reject.

15. In conclusion, BA-NY currently cannot meet checklist item (ii) requiring that it provide competitors with nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the 1996 Telecommunications Act. Moreover, BA-NY will be further from compliance with this checklist item when it no longer provides network elements in combination for competitors.

16. This concludes my affidavit.

Exhibit 1

The Discrimination Created by Denying Entrants Access to Network Element Combinations

Measure	Platform Combination	Loop and Port As Separated Elements
Customer Mix	90% Residential[a]	100% Business[a]
Expected 1998 Demand	203,819 lines[b]	24,205 line ports[c]
Expected 2001 Demand	1,475,107 lines[b]	418,053 line ports[c]
Customer outage when changing carriers	Imperceptible	5 minutes[d]
BA-NY daily order capacity[e]	1,773	255
Order Rejection Rate[f]	0.6%	23.0%
Order Confirmation Timeliness (hours:minutes)[g]	1:28	33:00
Order Confirmation: Target Timeliness[h]	24 hrs	48 hrs
Order Confirmation: Percent within Target[h]	100%	70%
Order Reject Timeliness (hours:minutes)[i]	2:56	40:00
Order Reject: Target Timeliness[j]	24 hrs	48 hrs
Order Reject: Percent with Target[j]	100%	67%

a. Attachment 1 to Affidavit of Gerard Mulcahy, page 5.

b. Smith Affidavit, Exhibit 1.

c. Smith Affidavit, Exhibit 2.

d. Butler Affidavit, page 8.

e. Mulcahy Affidavit, Attachment 1, page 11.

f. Mulcahy Affidavit, Exhibit E-7, page E-31.

g. Mulcahy Affidavit, Exhibit E-7, page E-31.

h. Mulcahy Affidavit, Exhibit E-7a, page E-32. Percent within target for unbundled loops is the 3 day average of the test.

i. Mulcahy Affidavit, Exhibit E-7, page E-31.

j. Mulcahy Affidavit, Exhibit E-7a, page E-32. Percent within target for unbundled loops is the 3 day average of the test.

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge, information and belief.

Joseph Gillan

Judith L. Cleghorn

Judith L. Cleghorn
MY COMMISSION # CC690558 EXPIRES
January 4, 2002
BONDED THRU TROY FAIN INSURANCE, INC.